

HUMAN RESOURCES PROCEDURES MANUAL



Human Resource Management
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Human Resources Procedures Manual

Preface and disclaimer

This manual is designed to:

- **Provide a basic overview and summary of the human resource procedures of the State of Delaware.**
- **Serve as a first source of information as questions arise.**

We encourage you to use the manual often.

This manual is formatted by topic and sections.

Section 1 contains interpretations of Merit Rules with hyper-links to relevant, existing policy, procedures, and other interpretative guidance.

Section 2 contains update(s) to the Human Resource Procedures Manual FY 2007

Section 3 contains relevant FY 08 Budget Epilogue references.

Disclaimer

This manual is not an employment contract. It does not confer rights or privileges upon employees. Employment with the State of Delaware is at will. This means that the State reserves the right, subject only to the express terms of applicable labor law agreement, statute, or merit rules, to terminate an individual's employment at any time. Except where express terms or collective bargaining agreements apply, the State of Delaware policies and procedures, rules, orders, directives and orders shall be controlling in regard to eligibility for employee benefits. The State's rules, policies and procedures, orders, and directives may be changed from time to time and at the sole discretion of the State of Delaware.

In the case of any discrepancy between this manual and any State law, regulation, policy, rule, order, directive, or collective bargaining agreement, the latter will prevail.

SECTION 1

Table of Contents	
	Topic (Listed by Merit Rule)
Civil Unions	The Civil Union and Equality Act of 2011
Merit Rule #1	Introduction
Merit Rule #2	Non-Discrimination
Merit Rule #3	Classification of Positions & Other relevant De. Code
Merit Rule #4	Pay Plan
Merit Rule #5	Employee Benefits
Merit Rule #6	Recruitment and Application Policies
Merit Rule #7	Examinations and Registers
Merit Rule #8	Certification
Merit Rule #9	Probation
Merit Rule #10	Other Appointments
Merit Rule #11	Layoff Procedures
Merit Rule #12	Employee Accountability
Merit Rule #13	Performance Review
Merit Rule #14	Employee Development and Communications
Merit Rule #15	Employee Responsibilities
Merit Rule #16	Human Resource Records
Merit Rule #17	Payroll
Merit Rule #18	The Grievance Procedure
Merit Rule #19	Definitions
Section 2 Updates	All updates added to this procedure during FY 11
Section 3	FY 11 Budget Epilogue Language Impacting Human Resources

The Civil Union and Equality Act of 2011

The Civil Union and Equality Act of 2011 creates a legal relationship of civil unions between same sex couples in the State of Delaware. The Act further recognizes legal unions between two persons of the same sex entered into jurisdictions outside of Delaware provided that such unions and the parties thereto meet Delaware eligibility requirements to enter into a civil union in the State of Delaware. Persons who enter into a lawful civil union in Delaware on or after January 1, 2012 or whose legal union is recognized under Delaware law on or after January 1, 2012, will have the same rights, benefits, protections, and responsibilities as married persons under Delaware law.

Employees who are party to a lawful civil union as defined in the preceding paragraph shall be included in any definition or use of the terms "dependent", "family", "husband and wife", "immediate family", "next of kin", "spouse", "stepparent", and other terms, whether or not gender-specific, that denote a spousal relationship or a person in a spousal relationship as they appear in the Merit Rules, Family and Medical Leave Act, State Policies, Procedures and Guidelines. The same proof of relation required of "dependent", "family", "husband and wife", "immediate family", "next of kin", "spouse" and "stepparent" will be required of employees who are party to a civil union.

INTRODUCTION – Merit Rule Chapter 1

As per Merit Rule 1.5, the Director of the Office of Management and Budget is authorized to provide rule interpretation and application guidelines consistent with the Merit Rules.

This manual is designed to consolidate procedures and interpretations of the Merit Rules and policy. The document is designed so that this information can easily be located in one document. You should read, understand, and comply with all provisions of this manual. It describes many of your responsibilities as an employee and provides rule interpretation and application guidelines consistent with the Merit Rules. One of our objectives is to provide a work environment that is conducive to both personal and professional growth.

Policies and Procedures are principles adopted to chart a course of action. They tell what is wanted and may also include why and how much. They are broad enough to indicate a line of action to be taken in meeting a number of day to day problems; they need to be narrow enough to give clear guidance. Policy and procedure development is a dynamic, ongoing process. Therefore, no manual can anticipate every circumstance or question about policy and procedure. New problems, issues, and needs give rise to the continuing need to develop new policies and procedures or to revise existing ones.

As the need may arise, the Office of Management and Budget (OMB) reserves the right to revise, supplement, or rescind any policies or procedures and to revise portions of the manual that may be impacted by policy and procedure changes from time to time as it deems appropriate. Notification of such changes to the manual will be made as changes occur. Any substantial changes will be in posted on the OMB Website and distributed to each organization's Human Resources representative and included in Section 2 during the

fiscal year that the change takes place. Subsequently the changes will be incorporated into the body of the manual in the appropriate section.

NON-DISCRIMINATION - Merit Rule Chapter 2

The State of Delaware is committed to providing equal employment opportunities to all Delawareans and State employees. The State continues to strive for a workforce that reflects the diversity of the State's population and labor market. Executive Order Number 8 provides for diversity. [Executive Order 8](#)

CLASSIFICATION – Merit Rule Chapter 3

Job title verses “Working title”--The job title and/or code shall be used to designate positions of the class or to identify incumbents in all budget estimates, payrolls, human resource records, reports and other official records, and in correspondence or other communications relative to human resources administrative processes. For purposes of external relations or other purposes not relating to human resources administration, any suitable organizational title or “working title” may be used provided the working title is not similar to or confused with any standard class title and is approved by the individual's supervisor. **(Ref. M.R. 3.1.1)**

Procedures for Establishing Positions (Ref. M.R. 3.1)

1. Authorization to establish all classified positions will be based on the Budget Act (processed through the regular budgetary process) or Clearinghouse approval. No establishments in excess of authorized full time equivalencies (FTEs/number of authorized positions) will be approved.
2. The agency completes the principal accountabilities section, knowledge, skills and abilities section of the Job Analysis Questionnaire (JAQ) and the Position Establishment Form, and identifies positions by job title, job code, corresponding pay grade and other pertinent data.
 - The agency HR representative, prior to submitting these documents to OMB, will establish the position in PHRST. The position number, automatically assigned by PHRST when the transaction is saved, needs to be documented on the Position Establishment Form prior to canceling out of the record. When the position is added in PHRST the “position status” field on the Description panel will be in **PROPOSED** status and will be grayed out. There is an edit in the PHRST system that prevents an employee from being hired into a position while it is in proposed status.
 - Once the established position is saved and is assigned a position number by the system, record that position number on the JAQ and the Position Establishment Form and submit both documents to the Office of Management and Budget (OMB).
 - Upon approval of the position establishment by the Director of Human Resource Management staff will go into PHRST and change the position status from **PROPOSED** to **APPROVED**. In the event the final classification approved is different from the agency proposed classification, Human Resource Management (HRM) will change the classification information before changing the status from proposed to approved.

- HRM will notify the agency via e-mail that the position establishment has been approved and the position status changed to approved.

Note: Seasonal positions require only the Position Establishment Form.

Job Analysis Questionnaire, Instructions, Answer Sheet, and Position Establishment Form can be found on the On the Classifications/Compensation webpage at [Delaware Office of Management and Budget, Human Resource Management - Classification and Compensation](#)

Reclassifications

The job title and/or code shall be used to designate positions of the class or to identify incumbents in all budget estimates, payrolls, human resource records, reports and other official records, and in correspondence or other communications relative to human resources administrative processes. (Ref. M.R. 3.1.1)

Classification (Ref. M.R. 3.2, and also see related Budget Epilogue language)

Working out of Class and Temporary Promotion--Employees may perform the duties of a higher position in an emergency or in relief of another employee for up to 30 calendar days without an increase in salary. However, if such performance is required for a period in excess of 30 calendar days, the employee shall be temporarily promoted and compensated accordingly.

- When it is known, prior to assigning higher level duties to an employee, that the temporary assignment will extend beyond 30 days but no more than 90 days, an employee MAY be temporarily promoted with or without competition. However, competitive selection is required on the 91st day in all cases when an assignment extends beyond 90 days except when the temporary promotion is needed to fill a position occupied by an employee out on approved State sponsored Short-Term Disability (STD). In such cases posting shall be delayed until the employee on STD returns to their position or exhausts STD.
- **Employees must meet the minimum qualifications of the position to which they are being temporarily promoted. Temporary promotions cannot exceed 6 months. It is not within the spirit of the Merit Rule to have employees serve 29 days, remove them for a short duration, and have them serve another 29 days without compensation. (Ref. M.R. 3.2 and also see related Budget Epilogue language.)**
- Agencies are reminded that in all cases when two employees are assigned to the same position and both the primary and temporary incumbents are compensated, a dual incumbency must be approved.
- As provided for in the Budget Act, reclassification of positions can result from critical reclassifications or maintenance reviews. Per Budget Epilogue, critical reclassification decisions are not appealable. Per Title 29, Section 5915 at [Delaware Code](#) of the Delaware Code, maintenance review results are appealable to the Merit Employee Relations Board (MERB); however, the slotting of an individual at a particular level of work within a Career Ladder Series is not appealable as a classification appeal even if part of a Maintenance Review. Slotting within a career ladder is a grievable matter. (Ref. M.R. 3.3.3 & 18.5) [Delaware Office of Management and Budget, Human Resource Management - Classification and Compensation](#)

Critical Reclassification Procedures (Ref. M.R. 3.3)

The Budget Act provides for changing the classification of a position during the fiscal year only if the requested change is certified as critical by the appointing authority and if the change is approved by the Director of the Office of Management and Budget and the Controller General. [FY 12 Budget Act](#)

The criterion has been developed for determining whether or not a request to change the classification of a position is in fact "critical". In order to be considered a critical reclassification, the requested change must have resulted from one of the following:

- A significant and unforeseen program change due to federal or state legislation, an executive order or some other unusual circumstance which brings about a necessary reassignment or new duties/responsibilities.

- A change in organizational structure/functions, which could not have been anticipated during the regular budgetary cycle and which, if approved, will result in measurable increases in productivity, significantly improved services and/or substantial cost savings. Specific documentation of such expected results must be provided at the time of the request in order for it to be considered.

- A vacancy which, if filled in its current classification, will not allow the agency to carry out its objectives in an efficient and effective manner.

In order for a request to be considered under the critical reclassification procedures, a critical reclassification request form from the appointing authority must be submitted justifying the critical nature of the request on the basis of one of the criteria stated above. Attached to this critical request form must be a fully signed Job Analysis Questionnaire (JAQ) for the position in question and a current organizational chart. The appointing authority must also certify that the necessary funding is available within the current budget. Reference [Delaware Office of Management and Budget, Human Resource Management - Classification and Compensation](#)

These documents must be submitted to Human Resource Management (HRM) in a timely manner according to the published deadline dates for receiving critical reclassifications. Filled requests submitted after a due date will be effective the following January or July.

In accordance with the Budget Act, reclassifications of filled positions which are approved by the Controller General and Director of the Office of Management and Budget will be effective July 1 or January 1. Vacant positions which are approved for reclassification will be effective the date on which approval is granted. . [FY 12 Budget Act](#)

Upon receipt in the HRM office, requests will be reviewed by the classification analyst assigned to that agency to ensure that all necessary documentation (critical

reclassification request form, JAQ and organizational chart) has been provided. In the event documentation is missing or incomplete, the agency will be notified. Once all documentation is presented, the analyst will review the JAQ, organizational charts and any other supporting documentation to determine if a change in classification is justified.

Written notification of the decision on requests for reclassification will be sent to the agency within five working days after a decision is reached.

Critical Comparability Request—Standard, Database, and Telecommunication Forms can be found at [Delaware Office of Management and Budget, Human Resource Management - Classification and Compensation](#)
Maintenance Review Procedures (Ref. M.R. 3.3)

Maintenance reviews are the review of occupational work to develop and maintain an up-to-date classification structure including identification of occupational groups/series and new class specifications.

Note: The classification structure identifies job classes by the occupation it represents such as Nursing, Engineering, Human Resources, etc. Class specifications are written to describe the work of the occupation and not intended to identify a particular position, agency or program. The new class specifications are written in a new format that describes the occupational work, essential functions of the work, and the levels of work (for example, Planner I, II and III). The review will be of the current class specifications, organizational charts, information gathered during meetings with agencies and other information gathered from various sources. Individual job analysis questionnaires (JAQ s) will not be requested at the beginning of the review; however, if a position is assigned work that is not consistent with the current or new class specifications, an employee, or in the case of vacant positions, agency management can complete a JAQ to describe the work of their particular position. The following are the basic steps involved in the process:

- Identify occupations to be reviewed and issue a maintenance review schedule to all agencies.

- As requested, meet with the agency head, division directors and agency human resources managers/representatives prior to the beginning of the review to explain what is being done, why it is being done and the possible outcome.

- Identify, analyze and group classes belonging to that occupation.

- Draft class specifications.

- Submit draft class specifications, tentative pay grades and class allocations to applicable agencies for review and request written comments by agency management. As requested, meet with agency head, division directors and agency human resources managers/representatives to present an overview and discuss the initial recommendations and draft specifications for review where

significant changes in class structure occurred. For positions identified as no longer working in the occupational area described by the class specification, a JAQ needs to be submitted to HRM.

- Finalize class specifications.

- Evaluate final specifications by Job Evaluation Committee.

- Notify agencies of final classification decisions.

- Agency human resources representatives notify employees of final classification decisions. Employees who disagree with the final classification decision, and elect to file a classification appeal with the Merit Employee Relations Board, must then complete a JAQ describing the work of their particular position. The JAQ with appropriate authorized signatures would be submitted to the agency Human Resources Office for review prior to submission to HRM.

- Maintenance review results are submitted to the Joint Finance Committee.

- Implementation of results is accomplished by the agency immediately after the classification decisions have been authorized by the passage of the Budget Act.

Possible Outcomes as a Result of Reclassification (Ref. M.R. 3 and 4)

An individual position as well as an entire class can go up in pay grade. In this event, the rules concerning promotional pay rates shall apply in the same manner as if the incumbent had been promoted. **(Ref. M.R. 4.6 and 4.12.1)**

An individual position can remain in the same classification with the same pay grade. An entire class can remain the same with no change in pay grade.

An individual position can be reclassified to a class of the same pay grade. In this event, the rules concerning transfer pay rates shall apply in the same manner as if the incumbent had been transferred. The position incumbent shall continue to be paid at the same pay grade and percentage of midpoint. **(Ref. M.R. 4.5 and 4.12.1)**

Individual positions as well as an entire class could go down in pay grade. In this event, Merit Rule 4.12.1 provides a "grandfathering" for incumbents. The position incumbent, for pay purposes, will retain the pay range of the former pay grade as long as the incumbent remains in that position. **(Also, Ref. M.R. 4.12.1 & 4.12.3)**

When a position in the classified service is reclassified to another class, the incumbent shall be entitled to serve therein with permanent status provided the incumbent had such status in the former class and meets the minimum qualification requirements for the new class. In such a case, however, a written examination shall not be required. **(Ref. M.R. 3.3.1)**

Should the incumbent not qualify for the position as reclassified, he/she shall be transferred to a vacant position for which qualified within the classified service. In the event extenuating circumstances exist, the appointing authority may request approval of the Director of Human Resource Management to retain the incumbent in the position for a reasonable period, in an underfill capacity, pending qualification at the higher level or pending a transfer. **(Ref. M.R. 3.3.2)**

When a position is reclassified to a class in an approved Career Ladder, placement of the position incumbent within the career ladder is based on promotional standards, which have been approved by the Director of Human Resource Management. **(Ref. M.R. 3.3.3)**

Employees in positions that are allocated into a newly created career ladder cannot be slotted until minimum qualifications and promotional standards have been developed and approved by Human Resource Management (HRM). HRM will be working with appropriate agencies to develop minimum qualifications and promotional standards for each level within the career ladder. In conjunction with HRM Selection Unit staff, a slotting board will then apply the minimum qualifications and promotional standards to determine the appropriate slotting level for each incumbent in accordance with Merit Rule 3.3.3. Employees subsequently promoted in accordance with authorized career ladder promotional standards, receive the promotional increase retroactively to July 1. [**Delaware Office of Management and Budget, Human Resource Management - Classification and Compensation**](#)

Maintenance review classification determinations may be appealed to the MERB, but pay grade determinations shall be final as provided in Budget Epilogue.

Underfills

An authorized position may be underfilled in Authorized Career Ladder classes in accordance with criteria developed by the appointing authority and approved by the Director of Human Resource Management. Underfilling may start at any level in the Career Ladder in accordance with the approved criteria. The position incumbent may be promoted through the Career Ladder in accordance with promotional standards included in the criteria approved by the Director of Human Resource Management. Promotional standards must include written examinations, performance tests, oral examinations, performance evaluations or other tests which demonstrate the ability to move to the next level in the Career Ladder. **(Ref. M.R. 10.7.2)**

Underfill is also allowed within non-career ladder class series upon approval. Established competitive appointment procedures (except for demotion) still apply. The employee shall advance to the authorized class upon meeting the minimum requirements for the classification, contingent upon satisfactory performance in the underfilled position. In the event qualified applicants are not available in the class series of the position, the position may be filled with a qualified candidate from a related classification (out-of-class series) upon recommendation of the appointing authority and approval of the Director of Human Resource Management. **(Ref. M.R. 10.7.1)**

Dual Employment. For additional guidance in this area, The Delaware Code at 29 Del. C. Section 5806 (b) states, “No state employee, state officer or honorary state official

shall have any interest in any private enterprise nor shall such state employee, state officer or honorary state official incur any obligation of any nature which is in substantial conflict with the proper performance of such duties in the public interest." No state employee, state officer or honorary state official shall accept other employment, any compensation, gift, payment of expenses or any other thing of monetary value under circumstances in which such acceptance may result in any of the following:

- (1) Impairment of independence of judgment in the exercise of official duties;
- (2) An undertaking to give preferential treatment to any person;
- (3) The making of a governmental decision outside official channels; or
- (4) Any adverse effect on the confidence of the public in the integrity of the government of the State.

Provided however, that a minimal gratuity provided on occasion to blind or disabled state employees or other blind or disabled persons supervised by the Division of Visually Impaired shall not be considered to be a violation of this section.

Delaware Code, Title 29, Chapter 58, Subchapter I Code of Conduct

See also below, 29 Del. Code Section 5822(a) – (f) for recordkeeping requirements in a dual employment situation:

(a) Any person employed by the State, or by any political subdivision of the State, including but not limited to any county, city or municipality, who also serves in an elected or paid appointed position in state government or in the government of any political subdivision of the State, including but not limited to any county, city or municipality, shall have his or her pay reduced on a prorated basis for any hours or days missed during the course of the employee's normal workday or during the course of the employee's normal workweek while serving in an elected or paid appointed position which requires the employee to miss any time which is normally required of other employees in the same or similar positions.

(b) Any day an employee misses work due to his or her elected or paid appointed position, he or she shall have his or her immediate supervisor verify a time record stating specifically the number of hours worked that day; said verification to take place at least once every pay period.

(c) All time records, so verified, shall be kept by the immediate supervisor until such time as they are required by the State Auditor.

(d) No employee shall be permitted to make up time during hours other than the normal workday for purposes of compensation. A normal workday is defined by Merit Rule 5.0200. A standard work schedule is defined by Merit Rule 5.0210. [Note now **Merit Rule 4.2**]

(e) Any hours or days during which an employee uses vacation, personal, or compensatory days to which he or she is entitled shall not constitute hours or days which fall within the scope of this subchapter.

(f) School administrators whose duties require that they work regularly during summer months shall not be exempted from this chapter. If a school administrator shall have no immediate supervisor, the school administrator's time

record shall be verified by the appropriate school board at its next regular or special meeting following any pay period in which said administrator missed work due to his or her elected or paid appointed position.

PAY PLAN – MERIT RULE CHAPTER 4

Selective Market Variation (SMV) Starting Rate

For an employee hired or promoted into a class on Selective Market Variation (SMV), agencies may approve a starting rate up to 80% of midpoint where the applicant's qualifications are clearly over and above those required as minimum by the class specification. Upon agency request, the Director may approve a starting rate higher than the 80th percentile. **(Ref. M.R. 4.4.2 and 4.6)**

This is consistent with the intent of the Merit Rule allowing agency appointing authorities to hire up to 85% for the regular pay scales which start at 80%. The SMV ranges start at 75%; therefore, the approval level for agency appointing authorities would be 80% for SMV advanced salaries.

Movement From An SMV Job Classification To Non SMV Job Classification The merit rule definition of Selective Market Variation (SMV) states that SMV is a process used to increase the salary range for job classifications where severe market competition makes it difficult for the State to recruit and retain qualified employees. Since the SMV rate of pay is based on the job classification, when an employee elects to move from an SMV approved job classification to a non SMV job classification, the rate of pay for the employee will be adjusted based on the regular merit pay range of the employee's current assigned pay grade. The adjustment will include recalculation of all general salary increases as though the employee had never been in a higher SMV pay range. Promotional increases will be granted in accordance with Merit Rule 4.6 after such recalculation, if applicable. Any request for a greater salary shall be made pursuant to Merit Rules 4.6 and 4.7. **(Ref. M.R. 4.5, 4.6 & 4.7)**

Grandfathering of Paygrade and Pay Range (Ref. M.R. 4.12.1)

Lateral Transfer - When an employee accepts a lateral transfer the employee loses his/her grandfathering rights. This involves an employee who applies for; i.e. submits an application, appears on a certification list, etc. and accepts a transfer within or between agencies or departments from one position to another position within the same class.

Promotion - When a "grandfathered" employee, (either in a designated career ladder or an underfill in a non-career ladder class series or in a stand alone class being promoted to a higher classification) is promoted to a higher classification, the employee loses his/her grandfathering rights. The promotion is based on the actual assigned pay grade of the class not the grandfathered pay grade of the employee. As is the case with all promotions, the rules concerning promotional pay rates shall apply.

Example: An employee was previously classified as an Office Manager, PG 10 and was reclassified to an Administrative Specialist III, PG 9. The employee, for pay purposes, is grandfathered at PG 10. The employee subsequently applies for and is selected for an Officer Manager position. The employee is promoted in accordance with the rules concerning promotional pay rates (5% increase or to the minimum whichever is greater)

since the employee occupies an Administrative Specialist III position, PG 9 and is going into a different position classified as Office Manager, PG 10.

Any employee may be required by competent authority to perform any of the duties described in the class specification, any other duties which are of similar kind and difficulty, and any duties of lower classes in the same occupational series or in other series, which have similar characteristics. Any employee may also be required to serve in a higher position in emergencies, or in relief of another employee. However, if such higher service continues beyond 30 calendar days, the provisions concerning temporary promotions shall apply.

Temporary Promotion--A temporary promotion may be granted by the appointing authority, for a period of time not to exceed six (6) months. When an assignment extends beyond 90 days, the position must be posted and the selection process started.

Personal Maintenance--An employee who is provided with personal maintenance including lodging and/or meals shall have the value of such lodging or meals regularly deducted from his pay. The value shall be determined by a committee consisting of the Director of the Office of Management and Budget, as Chairman and the Appointing Authority concerned, and shall be based on the approximate cost to the State of providing such maintenance. This committee shall ensure that uniform criteria and values are applied to similar maintenance provisions throughout the classified service.

Considerations may include:

- ...whether residence is required
- ...whether the employee is on-call on a 24-hour basis
- ...whether the employee has other employment
- ...the value to the State of having the employee live on the premises.

(See, also, FLSA "Section 3 (m) "Wage" paid to any employee includes the reasonable cost...to the employer of furnishing such employee with board lodging, or other facilities, if such...are customarily furnished... to his employees." This section continues on to clarify allowable deductions.)

Fair Labor Standards Act (Ref. M.R. Chapter 4)

Reinstatement -- Reinstatement applies only to class. It does not apply to duty assignment, previously accrued leave, or appointment status. (Ref. M.R. 4.8 & 19.0)

- The reconstructed salary upon reinstatement includes movement to midpoint if appropriate. (Ref. M.R. 4.8)
- After reinstatement, determination concerning pension, insurance eligibility and other benefits will be based on the respective regulations. (Ref. M.R. 4.8)
- "Grandfather Privileges" (for sick and annual leave) are not to be resumed upon reinstatement. (Ref. M.R. 4.8 & 5.3.5) L

Layoff--When an employee is rehired into a different class in the classified service after being laid off from State service of not more than one year, such employee shall be paid in accordance with the provisions of 4.4. (Ref. M.R. 11 and see 4.11 if the individual is a hiring preference candidate & Ref. M.R. 7.9.1)

When an employee is rehired into the same class in the classified service after being laid off from State service of not more than one year, such an employee shall be treated the same as a reinstatement in terms of pay and benefits. **(Ref. M.R. 11)**

Changes in Pay Rate--The effective date for all advancements of pay shall be the exact day established for the advancement, the date the promotion is made, or the date of any other event authorizing the advancement. Payment purposes include shift differential pay, stand-by duty pay and hazardous duty pay. **(Ref. M.R. 4)**

Overtime for FLSA Exempt--Upon receipt of the request for review of the identified classes, the designation of affected facilities or work sites and documentation that turnover or recruitment difficulties are directly related to overtime market pressures, the Director of the Office of Management and Budget shall survey the appropriate labor market to determine the position of the State's overtime rate within this market. This survey information will be reviewed by the Director of the Office of Management and Budget and the Controller General, who shall examine the operational need for an increased overtime rate as well as the availability of required funding and shall then approve or disapprove an adjusted overtime rate for the identified class. **(Ref. M.R. 4.13.8)**

Split Shift--An employee who is authorized and required by the appointing authority to work a split shift shall have his/her pay supplemented at the stated rate while so assigned, subject to the same provisions of 4.15.7. **(Ref. M.R. 4.15 & 19.0)**

A split shift for these purposes shall be any shift arrangement, which is broken into two parts with two hours or more between the parts. **(Ref. M.R. 4.15 & 19.0)**

Shift Differential--Upon receipt of the request for the review of the identified classes, the designation of the affected facilities or work sites and documentation that turnover/recruitment difficulties are directly related to shift differential market pressures, the Director of the Office of Management and Budget shall survey the appropriate labor market to determine the position of the State's shift differential rate within this market. This survey information shall be reviewed by the Director of the Office of Management and Budget and the Controller General, who shall examine the operational need for an increased shift differential rate as well as the availability of required funding and shall then approve or disapprove an adjusted shift differential rate for all positions in the identified class. **(Ref. M.R. 4.15.6)**

Supervisor verses Subordinate rate of pay--A supervisor may have subordinates who are paid at a rate higher than his rate, since pay rates do overlap as length of service varies and since a subordinate position may have the same pay grade, due to other factors of job content. However, no appointing authority shall assign a lower pay grade to supervise, even temporarily, a higher pay grade, without the written approval of the Director of the Office of Management and Budget. **(Ref. M.R. 4)**

Holiday pay and retirement--Employees retiring at the end of a month are eligible for holiday pay as they are in a continuing pay status (if the holiday falls at the end of the month or last eligible work day). This rule only applies to employees going on state pension. **(Ref. M.R. 4.14.3)**

Charge Nurses—Management can change the designation of who can get this without having to justify the change. Regardless of the shift worked, nurses can be eligible for both charge nurse and shift differential pay. (Ref. M.R. 4.19)

SERT--FLSA exempt employees who serve on SERT are entitled to time and a half overtime if they are called back. If they are called during regular working hours, they receive straight time. Travel time from home to work is normally not compensable. However, when an employee is called back under an emergency situation and the employee must travel a "substantial distance" to address the emergency (i.e. to a location other than the employee's regular work site); compensation should begin when the employee leaves home. (Ref. M.R. 4.16.2)

Permanent Part-Time Employees and Compensation for Holidays

Part-time Employees—a part-time employee who is unable to work a full day on a holiday should be paid his/her regular pay for the holiday, plus one and one-half times the daily rate for the work actually performed, if the employee is eligible for overtime compensation. When a holiday falls on an employee's regular scheduled workday and the employee is unable to work due to illness, the employee is still eligible for his/her regular pay. Permanent part-time employees receive regular pay for a holiday, which falls on a scheduled workday. They receive a percentage of a day's pay when a holiday falls on an unscheduled workday. If the holiday falls on a day employees would not have been scheduled to work, they shall receive equivalent time off on a pro-rated basis. Ref. M.R. 4.14 (See, examples below)

37.5 Hour Work Week

Employee's regular schedule is 7.5 hours on Sunday, Monday, and Saturday for a total of 22.5 hours per week, 60% of full-time. A state holiday falls on a Friday.

This employee is entitled to 4.5 hours of time off for the holiday (holiday=7.5 hours but employee works a 60% of full-time schedule; $7.5 \times .60 = 4.5$ hours).

Employee has a 50% schedule, works 18.75 hours every week, however the actual days worked vary from week to week. A state holiday falls within the week and the employee does not work any hours on the state holiday.

This employee is entitled to 3.75 hours of time off for the holiday (holiday=7.5 hours but employee works 50% of full-time schedule: $7.5 \times .50 = 3.75$ hours).

40 Hour Work Week

Employee's regular schedule is 5.0 hours on Sunday, Monday, Friday, and Saturday, for a total of 20 hours per week, 50% of full-time. A state holiday falls on a Tuesday.

This employee is entitled to 4.0 hours of time off for the holiday (holiday=8.0 hours but employee work a 50% of full-time schedule; $8 \times .50 = 4.0$ hours).

4.14.2 Employees eligible for holiday pay and overtime compensation who are authorized to work on a holiday shall be compensated for the hours actually worked on the holiday at 1.5 times and for the holiday on a pro-rata basis.

37.5 Hour Work Week

Employee's regular schedule is 7.5 hours on Sunday and Monday, and Saturday for a total of 22.5 hours per week. The employee is FLSA Non-Exempt. A state holiday falls on a Monday and the employee works 7.5 hours on Monday, his/her regular schedule.

This employee receives $7.5 \text{ hours} \times 1.5 = 11.25$ hours for working the holiday plus 4.5 hours for the holiday.

Employee has a 50% schedule, works 18.75 hours per week, however the actual days worked vary from week to week. The employee is FLSA Non-Exempt. A state holiday falls within the week and the employee works 5 hours on the state holiday.

The employee receives $5 \text{ hours} \times 1.5 = 7.5$ for working the holiday plus 3.75 hours for the holiday (the holiday is worth 7.5 hours; $.50 \times 7.5 = 3.75$).

40 Hour Work Week

Employee's regular schedule is 5.0 hours on Sunday, Monday, Friday, and Saturday for a total of 20 hours per week, 50% of full-time. Employee is FLSA Non-Exempt. A state holiday falls on a Monday and the employee works 5.0 hours on Monday.

The employee receives $5 \text{ hours} \times 1.5 = 7.5$ hours for working the holiday plus 4.0 hours for the holiday (the holiday is worth 8.0 hours; $8.0 \times .5 = 4.0$).

4.14.2 Employees eligible for holiday pay but not normally eligible for overtime compensation required to work on a day observed as a legal holiday shall be credited for the holiday on a pro-rata basis, and may be credited for the hours actually worked on the holiday at straight time, except as otherwise provided by the Director of the Office of Management and Budget.

37.5 Hour Work Week

Employee's regular schedule is 7.5 hours on Sunday, Monday, and **Saturday** for a total of 22.5 hours per week. The employee is FLSA Exempt. A state holiday falls on a Monday and the employee works 7.5 hours on Monday, his/her regular schedule.

The employee receives 4.5 hours for holiday plus 7.5 hours for the time worked on the holiday.

Employee's regular schedule is 7.5 hours on Sunday, Monday, and Saturday for a total of 22.5 hours per week. The employee is FLSA Exempt. A state holiday falls on a Tuesday. The employee works his/her regular schedule and works 4.0 hours on Tuesday, the holiday.

The employee receives 4.5 hours for the holiday plus 4.0 hours for working the holiday.

Employee has a 50% schedule and works 18.75 hours per week, however the actual days worked vary from week to week. The employee is FLSA Exempt. A state holiday falls within the week and the employee works 5 hours on the state holiday.

The employee receives 3.75 hours for the holiday plus 5 hours for the time worked on the holiday.

40 Hour Work Week

Employee's regular schedule is 5.0 hours on Sunday, Monday, Friday, and Saturday, for a total of 20 hours per week, 50% of full-time. Employee is FLSA Exempt. A state holiday falls on a Monday and the employee works 5.0 hours on Monday.

The employee receives 4.0 hours for the holiday (the holiday is worth 8.0 hours; $8.0 \times .5 = 4.0$) plus 5 hours for working the holiday.

- If the holiday falls on a day a part-time employee would not have been scheduled to work, the employee shall receive either equivalent time off for the appropriate number of pro-rated hours or shall receive pay for the appropriate number of pro-rated hours, at the discretion of the appointing authority.

Overtime Calculation--Regular Rate for Overtime Compensation under FLSA—
Included in this rate are shift differential pay, stand-by pay and hazardous duty pay. Excluded from this rate are holiday premium pay and call-back pay.

Calculation of Stand-By Duty Pay:

- SERT members who are assigned stand-by duty on a rotational basis can be paid the five-percent of their hourly rate for the number of hours they are on stand-by in excess of their normal forty-hour workweek. This is provided that the calculation used to determine the hourly supplement is based on the employee's pay grade midpoint.
- Generally, the supplement is calculated based on stand-by duty for a full pay period. However, when team members are assigned on a rotational basis for periods of seven days each, the use of an hourly rate would be more appropriate.
- The formula for hourly stand-by pay differential equals 5% of midpoint divided by 52 weeks divided by 37.5 or 40 hours. The formula for bi-weekly stand-by pay differential equals 5% of midpoint divided by 26. The annual stand-by pay differential equals 5% of midpoint.
- If an employee is on stand-by for less than a full pay period, the supplemental pay is based on and added to the number of hours per week the employee regularly worked during the period the employee was assigned to stand-by duty.

- If an employee is in a FLSA covered position and their position is reclassified to a FLSA exempt position with a retroactive date, the employee is not responsible for paying back any overtime payments received prior to notification of their change in FLSA status.
- Call-back pay begins once the employee arrives at his/her worksite and ends once the individual leaves his/her worksite subject to a 4 hour payment minimum. However, employees traveling to another site may be reimbursed for any time commuting minus their normal commute time. Employees who work from their vehicles may be paid as soon as they begin working (for example, once they log into the computer in their car or pick up a client.)

Stand-By Duty (Ref. M.R. 4.17)

This section assumes that the employee in question has met the eligibility requirements for receiving stand-by pay and has been approved by the Director of Human Resource Management. Employees may be approved by the Director of Human Resource Management to receive stand-by pay for assignment to stand-by duty on a continuous basis (every week in every pay period) or a rotating basis (on and off for periods of seven days each). Generally, the supplement for those assigned on a continuous basis is calculated based on a full pay period. When approved employees are assigned to stand-by duty on a rotational basis for periods of seven days each, the use of an hourly rate is more appropriate. The supplement is based on and added to the number of hours per week the employee regularly worked during the period the employee was assigned to stand-by duty. Employees on stand-by on a rotational basis just receive the supplement for the week they are assigned.

The hourly stand-by pay differential equals 5% of midpoint divided by 52 weeks divided by 37.5 or 40 hours. The bi-weekly stand-by pay differential equals 5% of midpoint divided by 26. The annual stand-by pay differential equals 5% of midpoint.

Examples:

Continuous Basis:

A pay grade 9 employee at 80% of midpoint regularly works 37.5 hours per week and is regularly on stand-by duty every week.

Employee receives regular bi-weekly pay of \$1,033.769231.

Employees also receives \$64.61 as stand-by duty supplement \$33,597 (midpoint pay grade 9) x .05 = \$1679.850000

\$1679.85 divided by 26 = \$64.609615

Employee's regular pay and supplemental pay = \$1,033.769231 + \$64.609615 = \$1098.378846

Rotating Basis:

A pay grade 9 employee at 80% of midpoint regularly works 37.5 hours per week and is on stand-by duty every other week. The stand-by supplement for the week the employee is actually on stand-by is calculated as follows:

Employee receives regular bi-weekly pay of \$1,033.769231

Employee also receives \$32.304825 as stand-by duty supplement.

\$33,597 (midpoint pay grade 9) x .05 = \$1679.850000

\$1679.850000 divided by 52 (weeks) divided by 37.5 (hours) = \$.861462
\$.861462 x 37.5 hours (number of regularly scheduled hours) = \$32.304825
Employee's regular pay and supplemental pay = \$1,033.769231 + \$32.304825 =
\$1,066.074056 Note: Since this is an automated calculation in PHRST, the above
manual calculation may differ by a penny or two due to rounding rules.

Compensatory Time

- The maximum accrual of FLSA compensatory time is 240 hours (160 hours worked at time and half) unless the employee is engaged in work in a public safety activity, an emergency response activity, or certain specified seasonal activities in which case the employee may accrue a maximum of 480 hours (320 hours worked at time and a half.)
- FLSA compensatory time may be paid out at the discretion of the agency at anytime with consideration given to when it is most fiscally sound.
- Payout of FLSA compensatory time is to be made at the rate of pay the employee is earning at the time of the payout.
- Accrued FLSA compensatory time must be paid out prior to transfer, promotion, demotion or any change in position. The losing agency is responsible for any payout.
- FLSA compensatory time is non-transferable.
- Accrued FLSA compensatory time should be reviewed regularly to ensure use or payout within a reasonable time and in accordance with all applicable state and federal laws, rules and policies.
- Casual/Seasonal employees are not eligible for compensatory time.

Employee Performance Reviews

Performance Reviews: The July 1 pay increase should be denied based on the LATEST evaluation (if it is not satisfactory) provided a non-satisfactory review was completed before December 31st, the employee was given the opportunity to improve based on an agreed upon performance improvement plan, and subsequent review given within 3 to 6 months following the initial review. (Ref. M.R. 4.12.4)

Supervisory Pay

Applies specifically to DHSS and DOS registered nurses employed in one of the State medical facilities. (Ref M.R. 4.19)

EMPLOYEE BENEFITS– Merit Rule Chapter 5

Aggregate State Service is the total length of State employment, minus breaks in service and unpaid leaves of absence of more than thirty days. The calculation of aggregate service credit shall be based on the work schedule rather than the employment status of the employee.

1. **Full-Time Employment** will be credited on a full-time basis for aggregate service purposed, regardless of the employment status (temporary, seasonal, etc.)
2. **Part-Time Employment** (Permanent and Temporary on a regular schedule of at least fifteen hours but less than thirty-seven and one-half hours per week) will also count as full-time service for aggregate service purpose. Example: If an

employee works at least fifteen hours per week and has done so for a period of eleven years, the employee would be considered as having eleven years of aggregate service.

3. Part-Time Employment (Temporary, Casual on an intermittent or irregular schedule of less than fifteen hours per week) will count towards aggregate service on an hour-for-hour basis. Example: An employee working within a thirty-seven and one-half hour schedule who worked three and one-half hours on Monday, two hours on Wednesday, and two hours on Thursday would have one day of aggregate service at the end of the week. Likewise, an employee working within a forty hour schedule, who worked four days a week, two hours daily, would also have one day of aggregate service at the end of the week.
4. CETA Employment with a State agency will count as aggregate service for annual leave accrual purposed (State Personnel Commission, May 8, 1984). Full-time or part-time credit will be awarded based on the work schedule of the employee.
5. Co-Op Employment will count as aggregate service on an hour-for-hour basis. The amount of credit awarded will depend on the work schedule, and calculated according to the example in paragraph 3 above.

Human Resource representatives are reminded that the use of prior employment for aggregate service purposes must be supported by appropriate documentation (i.e., Payroll records, PT-1, PAR-3).

Adjusted Service Date

This is a theoretical date which represents the date an employee (new hire or current employee) was originally hired by the State, adjusted to reflect any periods during which an employee was not credited with State service (break-in-service). For employees who have had no break in service, their "Adjusted Service Date" is the date they were originally hired by the State. For employees who have had one or more breaks in service, the "Adjusted Service Date" is arrived at by calculating in months, days and years, total periods of time (following an employee's original hire date) during which an employee had a break-in-service (e.g., unpaid LOA, periods during which an employee was not a State employee), and adding this amount to the original date of hire.

For example, suppose:

1. An employee originally began to work for the State on 7/30/73.
2. a. The employee was on an unpaid leave of absence from 1/1/82 to 4/1/82:

Years	Months	Days	
82	04	01	
-82	01	01	
<hr/>			
00	03	00	= 3 months

-
-
- b. The same employee resigned from State service on February 15, 1984 and returned to State employment on July 1, 1985:

Years	Months	Days	
	06	31	
85	07	01	
-84	02	15	
01	04	16	= 1 year 4 months 16 days

3. Add the totals in 2.a. and 2.b. to yield total period of time during which an employee is not credited with State service:

$$\begin{array}{r}
 3 \text{ m} \\
 + 1 \text{ y } 4 \text{ m } 16 \text{ da} \\
 \hline
 1 \text{ y } 7 \text{ m } 16 \text{ da}
 \end{array}$$

4. Adjusted service date = 03/16/75 as follows:

	Years	Months	Days	
	73	07	30	(original date of hire)
	<u>+01</u>	<u>07</u>	<u>16</u>	(period of time during which no service credit is given)
(a)=	74	14	46	
(b)=	74	15	16	
(c)=	75	03	16	Adjusted service date

Leave

- Though accruing, employees shall not normally be granted paid annual leave until completion of six months of their initial probationary period.
- All annual leave credit and use shall be recorded in the personnel records of the agency, shall be subject to review by the Director of Human Resource Management, and pertinent data shall be available for inspection by the employee concerned. However, nothing herein shall prevent a supervisor from using discretion and providing a flexible work arrangement to accommodate an employee's needs. (Ref. M.R. 5.2)
- ANNUAL—Duration of Absence—Amount Charged (Ref. M.R. 5.2.2)**

7 - 21 minutes equals .25 hour
 22 - 36 minutes equals .50 hour
 37 - 51 minutes equals .75 hour
 52 - 60 minutes equals 1.0 hour

- If only a partial month is completed the following table shall be used to compute annual leave accrual for that month: (Ref. M.R. 5.2.1)

37.5 HOURS PER WEEK STANDARD WORK SCHEDULE

Total Days Worked		9.5 Hours Monthly Accrual		11.25 Hours Monthly Accrual		13.25 Hours Monthly Accrual
1		.50 hour		.50 hour		.75 hour
2		1.00		1.25		1.25

3		1.50		1.75		2.00
4		2.00		2.25		2.75
5		2.50		2.75		3.25
6		2.75		3.50		4.00
7		3.25		4.00		4.75
8		3.75		4.50		5.25
9		4.25		5.00		6.00
10		4.75		5.75		6.75
11		5.25		6.25		7.25
12		5.75		6.75		8.00
13		6.25		7.25		8.50
14		6.75		8.00		9.25
15		7.25		8.50		10.00
16		7.50		9.00		10.50
17		8.00		9.50		11.25
18		8.50		10.25		12.00
19		9.00		10.75		12.50
20 or more		9.50		11.25		13.25

40 HOURS PER WEEK STANDARD WORK SCHEDULE

Total Days Worked		10.0 Hours Monthly Accrual		12.00 Hours Monthly Accrual		14.00 Hours Monthly Accrual
1		.50 hour		.50 hour		.75 hour
2		1.00		1.25		1.50
3		1.50		1.75		2.00
4		2.00		2.50		2.75
5		2.50		3.00		3.50
6		3.00		3.50		4.25
7		3.50		4.25		5.00
8		4.00		4.75		5.50
9		4.50		5.50		6.25
10		5.00		6.00		7.00
11		5.50		6.50		7.75
12		6.00		7.25		8.50
13		6.50		7.75		9.00
14		7.00		8.50		9.75
15		7.50		9.00		10.50
16		8.00		9.50		11.25
17		8.50		10.25		12.00
18		9.00		10.75		12.50
19		9.50		11.50		13.25
20 or more		10.00		12.00		14.00

- Annual Leave Carry-over--The allowable annual leave carryover amount for permanent part-time employees would be prorated. **(Ref M.R. 5.2.4)**

Example # 1: An 80% employee would be allowed a maximum carryover rate of 80% of 318 hours (37.5 hours schedule) or 80% of 336 hours (40 hour schedule).

Regular Schedule	Formula	Maximum Annual Leave Carryover
37.5 hour	$318 \times 80\% =$	254
40.0 hour	$336 \times 80\% =$	269

Example # 2: An employee working 4 hours/day (20 hours/week) would be allowed a maximum carryover as follows—

Regular Schedule	Formula	Maximum Annual Leave Carryover
37.5 hour	$20 \text{ hour} \div 37.5 \text{ Hours} = 53\%$ $318 \times 53\% =$	159
40.0 hour	$20 \text{ hour} \div 40.0 \text{ Hours} = 50\%$ $336 \times 50\% =$	168

- Agencies may require documentation which justifies absences or verifies ability to return to work.
- Annual Leave Accrual Rate--When an employee reaches sufficient service time to receive a higher accrual rate for annual leave; employees begin accruing this higher level of leave on the first day following the month in which the service requirement is met. For example, an employee hired on 8/15/82 would have 10 years State service on 8/14/92. Accrual at the rate of 11.25 hours per month would begin on 9/1/92 and be credited to the leave record on 10/01/92. An employee hired on 8/1/82 would have their higher accrual rate begin on 8/1/92 and be credited to their leave record on 09.01/92.
- **Payout of Leave upon Separation of Employment**
 - For Employees leaving State employment it is strongly recommended they not be permitted to extend their separation date by utilizing accrued leave;
 - For Employee retiring from State employment, it is at the discretion of the Agency as to whether or not to allow an employee to extend the employee's employment by using accrued leave. **(Ref M.R. 5.2.4)**
 - Unused Annual Leave Payouts for Merit part-time Employees—while the accrual is prorated, the payout is not. Employees receive 100% of what they have accrued at the prorated rate. **(Ref. M.R. 5.2.8)**
- If an employee is ill or injured while on approved annual leave, the period of such illness or injury shall be charged to the employee's accumulated sick leave if it is documented to the satisfaction of the appointing authority. **(Ref. M.R. 5.3)**

At the end of the certified disability or at the expiration of accrued sick leave, whichever occurs first, annual leave may be utilized or additional leave may be requested in accordance with Merit Rule 5.7. **(Ref. M.R. 5.7)**

All sick leave credit and use shall be recorded in the personnel records of the agency and shall be subject to review by the Director of Human Resource Management. Appointing authorities will review sick leave records to reveal discernible patterns of repeated use of sick leave which may be construed as possible abuse. In such cases, supervisors should counsel, require medical evidence, make formal contact or take other appropriate action. Pertinent data shall be available for inspection by the employee concerned. **Ref. M.R. 5.3 and 5.7)**

- **SICK LEAVE Duration of Absence Amount Charged (Ref. M.R. 5.3.2)**

7 - 21 minutes equals .25 hour
 22 - 36 minutes equals .50 hour
 37 - 51 minutes equals .75 hour
 52 - 60 minutes equals 1.0 hour

- If only a partial month is completed the following table shall be used to compute sick leave for that month: **(Ref. M.R. 5.3.1)**

Total Days <u>Worked</u>		37.5 hours week 9.5 hours <u>Monthly Accrual</u>		40.0 hours week 10.00 Hours <u>Monthly Accrual</u>
1		.50 hour		.50 hour
2		1.00		1.00
3		1.50		1.50
4		2.00		2.00
5		2.50		2.50
6		2.75		3.00
7		3.25		3.50
8		3.75		4.00
9		4.25		4.50
10		4.75		5.00
Total Days <u>Worked</u>		37.5 hours week 9.5 hours <u>Monthly Accrual</u>		40.0 hours week 10.00 Hours <u>Monthly Accrual</u>
11		5.25		5.50
12		5.75		6.00
13		6.25		6.50
14		6.75		7.00
15		7.25		7.50
16		7.50		8.00
17		8.00		8.50
18		8.50		9.00
19		9.00		9.50

20 or more		9.50		10.00
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Workers' Compensation One Time Free Supplemental Pay Whenever an employee qualifies for Workers' Compensation, in addition to Workers' Comp Benefits, a disabled employee shall receive a supplemental calculated in accordance with 29 Del. C. [Section 5933](#), for a period not to exceed three (3) months or twelve (12) months (for employees entitled to hazardous duty pay if the injury was incurred while performing the hazardous duty) payable once per work related injury including any recurrence or aggravation of that work injury, whichever is applicable, from the date the disability begins. The employee shall not be charged sick or annual leave for an absence during this period of disability until after exhausting the three (3) months or twelve (12) months supplement and then only at the request of the employee. (**Ref. M.R. 5.2.6 & M.R. 5.3.6.4**)

In accordance with Delaware Code Title 29, §5120 eligible employees may use up to twelve weeks accumulated sick leave upon the birth of a child of the employee or the employee's spouse, or adoption by the employee of a pre-kindergarten age child. Leave for these purposes shall be used during the year immediately following the birth or adoption and be scheduled in advance whenever possible. Employees shall use such leave in accordance with Merit Rule 5.7 Family and Medical Leave Act (FMLA). Donated Leave does not apply. (**Ref. M.R. 5.3.6.7**)

Union Leave

Employees attending their personal grievance meetings and other meetings with management, such as a health and safety committee, shall be permitted to do so without loss of pay. Employees shall not, however, engage in any work on their own behalf or that of others for grievance/appeal investigations, preparation or attendance at such meeting on behalf of or in support of other employees on State time. (**Ref. M.R. 12**) Important note: If this subject matter is covered in whole or in part by a collective bargaining agreement, this Merit Rule shall not apply. (**Ref. M.R. 5.5.2**)

Family and Medical Leave Act (FMLA):

[Delaware Office of Management and Budget, Human Resource Management - The Family and Medical Leave Act](#)
[USDOL Final Regulations](#)

*** On January 1, 2012 at 10 a.m. The Civil Union and Equality Act of 2011**

The Civil Union and Equality Act of 2011 creates a legal relationship of civil unions between same sex couples in the State of Delaware. The Act further recognizes legal unions between two persons of the same sex entered into jurisdictions outside of Delaware provided that such unions and the parties thereto meet Delaware eligibility requirements to enter into a civil union in the State of Delaware. Persons who enter into a lawful civil union in Delaware on or after January 1, 2012 or whose legal union is recognized under Delaware law on or after January 1, 2012, will have the same rights, benefits, protections, and responsibilities as married persons under Delaware law.

Employees who are party to a lawful civil union as defined in the preceding paragraph shall be included in any definition or use of the terms "dependent", "family", "husband and wife", "immediate family", "next of kin", "spouse", "stepparent", and other terms,

whether or not gender-specific, that denote a spousal relationship or a person in a spousal relationship as they appear in the Merit Rules, Family and Medical Leave Act, State Policies, Procedures and Guidelines. The same proof of relation required of "dependent", "family", "husband and wife", "immediate family", "next of kin", "spouse" and "stepparent" will be required of employees who are party to a civil union.

- An FMLA eligible employee may request or an appointing authority may designate up to 12 weeks of job protected leave within a FMLA 12-month eligibility period for any of the following reasons:
 1. To care for the employee's child after birth, or placement with the employee of a child for adoption or foster care*;
 2. To care for the employee's spouse, son or daughter, or parent, who has a serious health condition (including illness or injury), that makes the employee unable to perform the employee's job*;
 3. For a serious health condition that renders employees unable to perform their job;
 4. Exigency Leave for qualifying event.
- An FMLA eligible employee may request up to 26 weeks of job protected Military Caregiver leave within its own FMLA 12-month eligibility period as an immediate family member or designated next of kin to care for a qualified servicemember (Military Caregiver Leave)*
- FMLA leave shall not be charged to an employee for time missed as a result of illness or injury covered by workers' compensation, unless requested by the employee.
- **Intermittent FMLA** Under certain circumstances, FMLA may be taken on an intermittent basis rather than all at once or the employee may work a part-time schedule. The following rules shall govern leave taken on an intermittent or part-time schedule.
 - Where leave is taken because of a birth of an employee's child or placement with the employee of a child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if the appointing authority agrees*.
 - Where FMLA leave is taken to care for a sick family member (employee's spouse, child or parent) or for an employee's own serious health condition, leave may be taken intermittently or on a reduced leave schedule when medically necessary.*
 - In order to accommodate intermittent leave or a part-time schedule, an appointing authority has the right to alter an existing job or transfer an employee to an alternative position with equivalent pay and benefits.
 - Exigency Leave is intermittent by event.

- Military Caregiver leave may be taken intermittently.
- An employee ordinarily must provide 30 days advance notice when the leave is foreseeable. An appointing authority may require medical certification to support a request for leave because of a serious health condition, and may require second or third opinions (at the appointing authority's expense). The appointing authority may deny the taking of the leave if the advanced notice and medical certification requirements are not met.
- An employee shall use available accrued annual leave and/or accrued sick* leave while on FMLA Leave with the exception of one workweek of annual leave and one workweek of sick leave, which the employee may elect to retain for use upon return to work. Usage of accrued annual leave and accrued sick leave shall only be in accordance with Merit Rules 5.2 and 5.3.

* Employees on 'Exigency' Leave may only use annual leave.

- An employee on FMLA Leave is also entitled to have pre-existing health insurance benefits (including the State of Delaware's share of the monthly cost) maintained while on FMLA leave. If an employee was paying all or a part of the premium payments prior to leave, the employee would continue to pay that amount during the leave period. Failure to make such contribution within 30 days of the due date will result in termination of coverage. In the event the employee does not return to work for at least 30 calendar days upon expiration of an FMLA Leave or any extension of leave approved by the appointing authority, the appointing authority shall recover the contributions for any period of unpaid leave only if the employee does not return to work for the following reasons.
 - The serious health condition of the employee or the employee's spouse,
 - Another reason beyond the employee's control.
- An employee who fails to return to work or to request a personal leave upon an expiration of a FMLA Leave will be subject to corrective action in accordance with Merit Rule 12.

Employees may obtain a detailed description entitled "FMLA Leave – Employee Rights and Responsibilities" from their Human Resources office. Hyperlink to the [Delaware Office of Management and Budget, Human Resource Management-Labor Relations Section](#)

- An appointing authority shall provide a copy of the FMLA guidelines to all employees when requested or upon the commencement of an FMLA Leave. Hyperlink to the [Delaware Office of Management and Budget, Human Resource Management-Labor Relations Section](#)
- FMLA leave is leave taken in accordance with the provisions of the Family and Medical Leave Act of 1993, as amended.

- FMLA 12 month-eligibility period means the 12 months measured forward from the date an employee first takes FMLA Leave. The next FMLA 12-month eligibility period would begin the first time FMLA Leave is taken after completion of any previous 12-month period. An employee eligible for FMLA Leave is entitled up to 12 workweeks of leave during any 12-month period. The FMLA 12-month eligibility period is used to determine the 12-month period in which the 12 weeks of FMLA Leave entitlement occurs. **(Ref. M.R. 5.7)**
- FMLA Military Caregiver Leave 12 month-eligibility period means the 12 months measured forward from the date an employee first takes leave. Leave is limited to 26 workweeks of leave during any 12 month eligibility period.
- Definition of son or daughter under Family and Medical Leave Act (FMLA). In order for an employee to use the Family and Medical Leave Act (FMLA) to care for a son or daughter with a serious health condition the following criteria must be met:

The child must be under the age of 18 unless “incapable of self-care because of mental or physical disability.” Agencies should refer to Section 825.113(c) (1) of the FMLA regulations for guidance on whether an adult child is “incapable of self-care.” In determining whether this is the result of a “mental or physical disability,” agencies should apply the definition found in the Americans with Disabilities Act.

Leave Related to State Employment (Ref. M.R. 5.5.2.4)

Employees may be excused from work with pay for a scheduled examination or interview for a classified position in the State. However, while employees are excused for the aforesaid tests and interviews, they are not excused for pre-employment drug screening examinations. Also, this section does not permit the use of state vehicles to travel to or from the interview or examination.

Educational Assistance (Ref. M.R. 5.8)

Educational reimbursement shall be administered by the individual appointing authority consistent with agency budgetary allowances, and the following guidelines:

1. Only permanent full-time and permanent part-time employees are eligible.
2. Tuition costs and related fees and course books are reimbursable. Parking fees, and/or transportation are not reimbursable.
3. The schooling must be work related. The educational program or course must be related to the current job or related to other career opportunities within the State of Delaware.
4. Prior approval must be granted, in writing, by the agency head.
5. Reimbursement will be made only upon satisfactory completion. Evidence of satisfactory completion and paid receipts must be submitted.

6. Any employee who leaves the employment of the State of Delaware within six months following the date of satisfactory completion of subject course shall return the full amount of the reimbursement.

Compassionate Leave (Ref. M.R. 5.4)

1. If your spouse dies, you are still entitled to use compassionate leave upon the death of your spouse's remaining family members (example-your spouse's sister). This is not the case upon divorce or the death of your domestic partner. In those cases, the entitlement to compassionate leave ends when either event occurs. (Still subject to special request in exceptional circumstances.) In exceptional circumstance, permission may be granted upon the written approval of the agency head.
2. The exceptional circumstances for employees persons not specified in the definition of immediate family must be approved by the agency head and will only be approved if consistent with the intent of the rule. The agencies will not list other categories that are automatically approved such as great-grandmother, great-grandfather, etc.
3. The 3 consecutive workdays do not have to be taken specifically on or after the day of death. It may begin immediately before, on or immediately after the death of the family member. This allows an employee, who has been granted other authorized leave for the purpose of being with his/her family member before the death, to use all or part of the leave as compassionate leave.
4. The three-day compassionate leave does not require the employee to attend the funeral or participate, in any way, in funeral related activities.
5. The agency head cannot approve the use of compassionate leave for more than 3 days.
6. Upon the deaths of more than one member of an immediate family, the employee is entitled to compassionate leave for each family member. For example, if both parents die in an automobile accident, the employee would be entitled to six days of compassionate leave.
7. Under the one-day leave, "funeral" is defined to include wakes, memorial services, burials, cremations, post funeral gatherings, etc. In addition, it may include travel to and from a funeral or reasonable rest before or after the funeral. However, employees must actually "attend the funeral" in order to receive this leave.
8. Under the one-day leave, employees are not automatically granted leave to attend a funeral during non-work hours. For example, an employee who works an 11:00 p.m. to 7:00 a.m. shift would not normally be granted leave to attend a 3:00 p.m. funeral. However, there are certain circumstances under which this leave could be authorized even when the funeral is scheduled during an employee's off hours. In the above example, the employee may be granted leave if travel or rest time justified it, in the opinion of the appointing authority. Under such circumstances, leave may be granted for a portion of a day.
9. The nieces, nephews, aunts, uncles, brother-in-law and sister-in-law are defined as follows:
Niece—
 1. The daughter of one's brother or sister
 2. The daughter of the brother or sister of one's spouse

Nephew—

1. The son of one's brother or sister
2. The son of the brother or sister of one's spouse

Aunt—

1. The sister of one's father or mother
2. The wife of one's uncle

Uncle—

1. The brother of one's father or mother
2. The husband of one's aunt (**Ref. M.R. 5.4.2**)

Brother-in-law and Sister-in-law

1. The sibling of your spouse,
2. The spouse of your sibling
3. The spouse of the sibling of your spouse.

10. Clarification of Compassionate Leave Great Aunt and Great Uncle, great aunt and great uncle do not fit the definition of aunt or uncle therefore employees are not entitled to one day compassionate leave for a 'near relative' to attend a memorial service in the event of the death of a great aunt or great uncle. However, an employee may request an exception under the immediate family category M.R. 5.4.1. If the agency head believes the request is consistent with the intent of the rule compassionate leave of 3 days may be granted for a great aunt or great uncle.

Other Leave (Ref. M.R. 5.5)

- All leave credited or used shall be recorded in the personnel records. Leave in Section 5.5 of the Merit Rules is not part of the annual leave accrual and usage provisions; therefore, it is subject to its own specific restrictions or limitations. (**Ref. M.R. 5.5**)
- **Subpoena Leave clarification.** A party to the proceedings is someone who is a defendant, plaintiff, petitioner, respondent or claimant. A parent's compulsory appearance at court due to a minor child's involvement makes the parent a "party" in the proceeding. Employees who are deemed to be parties to the proceedings are required to use annual leave or compensatory time or should flex their schedules; they are not excused with pay. Employees who are subpoenaed and/or whose children are subpoenaed and not party to the case may go on state time. (**Ref. M.R. 5.5.2.1**)
- **Leave under M.R. 5.5.3.1** To serve as a delegate to conventions of unions or employee organizations or to engage in similar job related activities does not apply to leave requests to attend JFC hearings. If the union holds a meeting at Legislative Hall and then lobby, then only the time at the meeting can be paid state time. The lobbying time must be charged as annual leave or other appropriate time. (**Ref. M.R. 5.5.2**)
- **Examination and Interview Leave clarification.** Leave for a scheduled examination or interview for a Classified position in the State shall be supported by documentation that the employee has been approved to compete in such examination. The employee shall present the documentation to their immediate

supervisor. The excused time shall include a reasonable period for reaching and returning from the site of the examination. **(Ref. M.R. 5.5.2)**

- **Prorated Leave for Part Time employees.** The allowable aggregate for part-time employees shall be on a pro-rata basis. Such leave and allowance must be with prior written approval of the appointing authority. **(Ref. M.R. 5.5.2)**
- **Donated Leave**
 - **Agency Responsibility** Agencies will review the employee's request for Donated Leave and approve or deny based on information provided. Agencies shall:
 - ⇒ review medical certifications every 30 days for requests to extend Donated Leave approvals;
 - ⇒ process Donated Leave calculation worksheets with direct donations received and pay employee accordingly;
 - ⇒ maintain accurate documentation of requests, donations and payment for auditing purposes;
 - ⇒ when requesting donations from the Donated Leave Bank forward the complete six page DL-1 form for donations to HRM, forward Donated Leave Calculation Worksheets which include requests for hours/funds, provide the date of the agency wide solicitation was sent, the date the statewide solicitation was sent, and information about Short-term disability.
 - **Donated Leave Bank** HRM will maintain the Donated Leave Bank including processing donations and approving funds for disbursement. HRM will:
 - ⇒ send Statewide Donated Leave solicitations upon request from agencies;
 - ⇒ provide guidance regarding administration of the program as needed;
 - ⇒ and audit the program and individual cases as needed.
 - When FMLA is used in conjunction with Donated Leave, FMLA will be applied first, leaving the employee with one work week of sick leave and one work week of annual leave. Donated Leave is applied second, exhausting the employee's sick leave and one half of their annual leave. **(Ref. M.R. 5.7)**
 - Subsequent periods of disability resulting from the same or related medical condition do not require a second 5 week disability period to qualify for receipt of donated leave within the same 12 month period. To

be considered however the subsequent periods each must be a minimum duration of 7 consecutive calendar days.

- Leave accruals are to be applied to the full pay cycle regardless of when the 1st of the month occurs during the pay cycle. Donations received on the employee's behalf are not to be applied if the employee has sufficient leave accrual to cover the pay cycle:

EXAMPLE: Using the pay cycle below, an employee would receive leave accrual on February 1. When completing the Donated Leave Calculation Worksheet, the full leave accrual for the month of January should be placed on the worksheet. If it is more than the employee needs there will be a negative balance that can be carried over to the next pay cycle. If there is insufficient leave accrual to cover the absence than any donations received may be applied.

What is not to be done is giving the employee only 7.5 or 8.0 hours to cover for February 1 and requesting donated leave or leave bank to cover the other 67.5/ 72 remaining hours.

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
January 20	January 21	January 22	January 23	January 24	January 25	January 26
January 27	January 28	January 29	January 30	January 31	February 1	February 2

- An employee can request donated leave for complications due to pregnancy and the six week disability period following the birth of a child provided the employee is certified as being totally disabled due to the complications.
- “Individuals who have tested positive for drugs and/or alcohol are undergoing treatment in an approved rehabilitation program and are not currently using drugs or alcohol, and meet the criteria for FMLA and Donated Leave, may be eligible to use these programs.”
- **Return Day** shall begin at 12:00 noon and end at 12:00 midnight.
 - All employees who live or work in Sussex County shall receive 3.75 hours for 37.5 hour workweek or 4.0 hours for 40 hour work week of holiday leave regardless of shift.
 - No employee may receive more than 3.75 or 4.0 hours of holiday leave for Return Day respectfully.
 - Return Day will be administered as follows for the various schedules:
 - Employees scheduled to work from 8:00 a.m. to 4:30 p.m. would have the holiday from 12:00 noon until 4:30 p.m.
 - Employees scheduled to work from 3:00 p.m. until 11:00 p.m. would have the holiday for their entire shift but would only be paid the 3.75/4.0 hours respectfully.
 - Employees scheduled to work from 11:00 p.m. on Return Day until 7:00 a.m. the following day would have the holiday from 11:00 p.m. until 12:00 midnight but would be compensated for the full 3.75/4.0 hours respectfully.

- Employees eligible for Return Day who are required to work shall be compensated in accordance with rules on holiday pay.
- Employees do not have to attend Return Day events in order to be eligible for the holiday.

Living in Sussex County shall mean the employee's official residence as reflected in PHRST. Working in Sussex County shall mean that the employee's regular work location is in Sussex County, without regard to where that employee may be assigned on a particular day. **(Ref. M.R. 5.1.1)**

- **Jury Duty**--State employees serving on jury duty are permitted to accept and retain both their State salary and the compensation paid through the Court. Employees are not required to turn the additional compensation earned over to the State. **(Ref. M.R. 5.5.2.2)**
- **Volunteerism**--Leave to Voluntarily Serve on Advisory Boards, Commissions and Similar Groups—there is no requirement that such service be directly job-related to an employee's position. The standard is that the agency agrees participation is a good use of the employee's time in support of the agency's mission, goals or objectives, or an important State initiative. **(Ref. M.R. 5.5.3)**
- **Return to Merit Rights** A classified employee leaving classified service to accept a position enumerated in 29 Dec. C. Section 5903 Subsections 4, 5, 6, or 23 should make a written request for a leave of absence from the merit system. The written request will be made by the employee's agency to the Director of the Office of Management and Budget. This request should be sent via the Director of Human Resource Management at the Dover office location. The request should include the employee's emplid and the budgeted position number to which the employee is transferring. After review the Director of Human Resource Management will forward the requests to the Director of the Office of Management and Budget. The Director of the Office of Management and Budget will determine whether the leave is requested consistent with the above stated Delaware Code provisions and Merit Rule 5.9. If the request is not made and granted, and it is later determined that the exempt position in question is not eligible for merit return rights, then the employee forfeits merit return rights. If the request is not made and not granted, and it is later determined that the exempt position in question is eligible for merit return rights, then the employee will be granted merit return rights.

Part-time Employees

- Part-time employees are granted compassionate leave on a pro-rated basis based on the number of hours such employees are regularly scheduled to work in a day. **(Ref. M.R. 5.4)**
- Paid Military Leave and Part-time schedule. An employee whose normal work schedule consists of four hours per day would receive those four hours as a day of military leave. If an employee's regular work consists of three full days per week, the employee should be allowed up to fifteen full days consistent with the requirements of the military orders. **(Ref. M.R. 5.5.1)**

- Annual and Sick leave accrual for Part-time employees. Leave for part-time employees is pro-rated. A permanent part-time employee accrues a percentage of the appropriate monthly accrual rate used for full-time employees. The percentage is based on the percentage of the fulltime schedule, which a permanent part-time employee normally works. All accrued leave is recorded. An employee who requests more leave than the accrual will be docked for the excess amount, allowed to use other appropriate leave or compensatory time, if available, or denied leave entirely.

Military Leave

- For employees employed less than full-time, the maximum number of hours for which the employee is eligible to be paid shall be determined on a pro rata basis. Such military or special duty leaves shall not be deducted from annual leave or in any other way result in loss of privileges or compensation to said employee. If the active duty tour extends beyond the number of hours for which the employee is eligible to be paid, the portion of the leave beyond that time period shall be without pay or in accordance with 5.6. **(Ref. M.R. 5.6.1)**
- Up to 90 days following the expiration of a military leave of absence, an employee with such leave who informs the appointing authority of their willingness and ability to return to State employment and produces evidence of honorable release from military service shall be returned to the same or comparable position for which the employee qualifies. The employee shall be entitled to receive the rate of pay, to which the employee would have progressed, assuming satisfactory performance. **(Ref. M.R. 5.6.1)**
 1. Employees must give prior notice (oral or written) of the military time. There may be rare instances when it is impossible to give such notice.
 2. The employer is entitled to proof of the military duty, although the employee may not be able to provide this until she/he returns to work. If doubt exists, the employer may contact the employee's military command with questions.
 3. The employer cannot force the employee to use vacation time for the leave.
 4. If the military service is for less than 30 days, the employee must report back to work on the next regularly scheduled work day following the completion of the military service AND after the expiration of eight hours after a period allowing for the safe transportation of the person from the place of service to the person's residence.
 5. Employers may contact the military commander when operational needs are severely impacted by the military leave. However, the military is not obligated to change the leave.
 6. With an employee's agreement, work hours may be adjusted so that the military leave occurs during the employee's normal off duty hours.

7. Employees who work rotating shift, or who normally work on weekends, should provide the employer with a six-month to one-year schedule of anticipated drills.

8. Employers may contact the National Committee for Employer Support of the Guard and Reserve (800-336-4590) who have ombudsman to help informally mediate solutions. The Veterans' Employment and Training Service (302-422-2838) or Delaware's VETS (368-6898) may also be able to provide additional info. It is recommended that upper management have knowledge of these calls before any is made. (See Military FAQ s) [Delaware Office of Management and Budget, Human Resource Management - Common/Frequently Asked Questions - Military Leave](#)

- Paid Military Leave. Should an employee's Military Leave span two calendar years, the Military Leave for the subsequent year is to be paid at the beginning of the new year, not to exceed the time actually on Military Leave or the Military Leave Benefit of 15 work days or pro-ration thereof for part-time employees. The payment at the beginning of the new calendar year will not entitle the employee to either holiday pay or additional vacation or sick leave accrual. The fifteen day paid military leave is to include the general pay increase if applicable.
- Military Leave is paid for the first 15 days served during any calendar year.
- Merit Rule 5.5.1.1 provides employees 112.5 (37.5 hour workweek) or 120 (40 hour workweek) paid hours military duty leave. Such leave with pay is granted to employees for certain periods of service in the uniformed service and is renewable each calendar year. If the active duty tour extends beyond the number of hours for which the employee is eligible to be paid, employees may request annual leave or leave without pay.
- While on military duty leave without pay less than 30 days, annual and sick leave will continue to accrue. During leaves without pay greater than 30 days, annual and sick leave will not accrue.
- As a practical matter, employees may not move on and off payroll at will throughout their leave of absence, using either annual leave or paid military duty leave in minute amounts to "sandwich" periods of otherwise unpaid leaves, for the purpose of accumulating and/or extending benefits (holiday pay, health insurance, etc.).
- **Clarification of Military Serious Illness/Injury Leave M.R. 5.5.1.6** To undergo a medical procedure or operation for a serious illness/injury suffered in the line of duty that is caused or contributed to by war or act of war (declared or not), not sooner than 30 calendar days of return to active State employment nor following one year of return from active military duty and not to exceed six months of absence. Employee must be a member of the United States Military or National Guard. This leave is to run concurrent with FMLA see 5.7

Miscellaneous Provisions

- Personal Leave of Absence without Pay The appointing authority shall not normally approve a leave of absence for an employee who has not completed the probationary period except to meet an extraordinary situation where it appears to be for the good of the business. **(Ref. M.R. 5.6)**
- Leave credited or used shall be recorded in the personnel records
 - If the job assignment of an employee on leave without pay is abolished or consolidated, the employee shall, upon return from leave of absence, be given employment in the same class or if that is not possible, in a comparable or lower class for which the employee is qualified or in accordance with Merit Rule 11. **(Ref. M.R. 5.6.2)**
- Pay and benefits (health care, pension, review date, etc.) after breaks in classified service will be governed by the regulation concerned (e.g., resignation, military, layoff, maternity, pension, sick leave, annual leave). **(Ref. M.R. 5)**
- Retired police officers that are subsequently hired by the state are entitled to receive compensation for unused sick leave upon their separation from the state. **(Ref. M.R. 5.3.4 per HB 17)**
- Agency aide positions are exempt and annual leave for these positions should be calculated at the higher accrual rate dictated for other exempt positions. . **(Ref. M.R. 5.2.1.3 & 29 Del. C. Section 5904A)**
[Delaware Code Title 29 Chapter 59 Subchapter I Definitions and Exclusions](#)
- Seasonal Employees are not entitled to paid leave. Seasonal employees are only to be paid for the actual hours worked. During times of emergency or early dismissals, agencies have the discretion of letting seasonal employees remain at work to meet operational and/or staffing needs (i.e. staffing 24/7 facilities) or rearranging their work hours within the pay period so that their paycheck is not impacted. **(Ref. M.R. 5.1, 5.2 and 5.3)**
- Leave Accrual During Unpaid Leaves. Leave accrual rates under the rules for sick and annual leave shall be based on aggregate service. Annual leave and sick leave will accrue during periods of paid leave of absence, or unpaid leave up to thirty (30) days, but will not accrue during leaves without pay greater than thirty (30) days. **(Ref. M.R. 5.2 and 5.3)**
In the case of a leave of absence without pay of 30 days or less, leave accrual continues during the absence. However it is not credited to the employee's record until the employee returns to an active status.

Example of non-paid status of 30 days or less: Employee goes into a no pay status from September 15 to October 14 and returns to work on October 15. The employee was on a leave of absence without pay for 30 days and returned to work on the 31st day. The employee would receive a full leave accrual for the month of September and October.

In the case of a leave of absence without pay of 31 or more days the employee would receive no leave accrual for the entire period of absence.

Example of non-paid status for greater than 30 days: Employee goes into a no pay status from September 15 to November 7 and returns to work on November 8

- The employee would receive prorated leave accrual from September 1 to September 14 (example - 10 days worked at 9.5 accrual rate equals 5.25 hours) & from November 8 to November 30 (example - 17 days worked at 9.5 accrual rate equals 8 hours);
- The employee would receive no leave accrual for the period of September 15 to November 7 inclusive.
- Sick Leave—normally sick leave requests are approved without question. However, where individual employee's track record of leave usage or chronic failure to utilize available alternatives for such appointments is questionable, e.g., a scheduled work day off under a compressed work schedule, or where an individual agency's mission or scheduling needs, e.g., a 24 hour security institution, place a premium on attendance reliability, managers in those situations have the right and even obligation to utilize the Rule's "subject to prior approval" standard and to take a different approach to assure that the agency can fulfill its mission in an effective manner. (Ref. M.R. 5.3.2 & 5.3.6.2)
- Compassionate leave and leave under merit rule 5.5 may be used -- without pay -- by temporary, seasonal, casual or emergency employees. (Ref. M.R. 5.4 & 5.5)
- Information concerning benefits such as pensions, health and life insurance, disability insurance programs, savings plans, and similar benefits will be provided to the employee upon request by the appropriate agencies (e.g., agency personnel office, Treasurer's Office, the Office of Management and Budget, credit unions, etc.). For additional information on eligibility requirements and employee health benefits please see OMB's website at [The Office of Management and Budget-Benefits](#)
- **Clarification of State of Delaware's break policy**
There is no federal, state or Merit Rule requiring a "rest" break of 15 minutes for either the morning and/or afternoon of the workday. Agencies have the discretion to set their own break policy. Additionally, meal and rest breaks are included in certain collective bargaining agreements (CBA) for those employees covered by such CBA providing the benefit. State law does require that an employee be provided an unpaid meal break of at least 30 consecutive minutes if the employee works 7.5 or more consecutive hours.

§ 707. Meal breaks.

(a) An employer must allow an employee an unpaid meal break of at least 30 consecutive minutes, if the employee works 7 1/2 or more consecutive hours. The meal break must be given some time after the 1st 2 hours of work and before the last 2 hours. However, this rule does not apply to any professional employee certified by the State Board of Education and

employed by a local school board to work directly with children. Also, it does not apply where there is a collective bargaining agreement or other written employer-employee agreement providing otherwise. Further, the Secretary of Labor shall issue rules for granting exemptions in cases where:

(1) Compliance would adversely affect public safety;

(2) Only 1 employee may perform the duties of a position;

(3) An employer has fewer than 5 employees on a shift at a single place of business (in which case the exemption applies only to that shift); or

(4) The continuous nature of an employer's operations, such as chemical production or research experiments, requires employees to respond to urgent or unusual conditions at all times and the employees are compensated for their meal break periods.

(b) Any employer who discharges or in any manner discriminates against an employee because that employee has made a complaint or has given information to the Department of Labor pursuant to a violation of this section, or because the employee caused to be instituted or is about to cause to be instituted any proceedings under this section, or has testified or is about to testify in any such proceedings shall be deemed in violation of this section.

(c) Whoever violates this section shall be subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each violation. Jurisdiction of violations of this subchapter shall be in any court of competent jurisdiction. (68 Del. Laws, c. 357, § 1; 69 Del. Laws, c. 294, §§ 8, 9; 70 Del. Laws, c. 186, § 1.)

Requesting Nursing Mother Break.

The Federal Patient Protection and Affordable Care Act amended Section 7 of the Fair Labor Standards Act (See 29 U.S.C. 207(r)) to require that employers, at the request of a nursing mother, provide a reasonable break to express breast milk for 1 year after the birth of her child. Agencies are required to provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public. Agencies are not required to compensate nursing mothers for breaks. However, where an agency already provides compensated breaks, an employee who uses that break time to express milk must be compensated in the same way that other employees are compensated for break time. In addition, the break may not be considered FMLA leave and the FLSA's general requirement that the employee must be completely relieved from duty or the time must be compensated as work time applies.

References:

<http://www.dol.gov/whd/nursingmothers/>

http://www.dol.gov/whd/nursingmothers/Sec7rFLSA_btnm.htm

Recruitment and Applications - Merit Rule Chapter 6, Screening and Ranking - Merit Rule Chapter 7, and Referral Lists - Merit Rule Chapter 8 Please refer to the **Users Guide For Merit System Hiring** and the **Recruitment Procedures**

PROBATION– Merit Rule Chapter 9

Normally probation can only be extended one time. The agency head must make the request for the extension, in writing to the Director of Human Resource Management, ten working days prior to expiration of the probationary period.

Probationary period for a promotion is the same as initial probation, one-year, however unlike initial probation, promotional probations may not be extended. **(Ref MR 9.3 & 9.4)**

There is no probationary period for demotions or transfers.

OTHER APPOINTMENTS– Merit Rule Chapter 10

Limited Term

Pursuant to Merit Rule 10.1.1, a permanent merit employee (or with rights into the merit system) who competitively accepts a limited term appointment that subsequently becomes a permanent vacancy, may be placed in the position with no further competition. This is in line with the procedures for temporary promotion. A temporary promotion that extends beyond 90 days requires the position to be posted and selection made in accordance with the promotion rules and should the position become permanent, the appointing authority must require a qualifying or competitive examination, unless the temporary promotion was competitive.

In the case where an employee is hired from the outside into a limited term position and the position becomes permanent, open competitive procedures must still be followed since the employee has never been a permanent merit employee.

(Ref. M.R. 10.1)

Limited term employees that were previously in the merit system before taking the limited term position are handled like all other merit employees. They also have hiring preference rights. **(Ref. M.R. 10.1.2)**

Limited term employees hired from the outside (without merit status) are entitled to annual and sick leave accrual and all paid leaves the same as Merit employees.

Additionally they:

- are eligible for State and double-state share for health insurance on the same terms as Merit employees
- can pay the \$5 for blood bank.

This group does not have hiring preference rights.

Promotions

The MERB ruled that promotional candidates “occupy a favored position” and that, “in the case of two applicants with equal qualifications, that favored position militates in favor of the selection of the promotional candidates”. While the MERB did not go so far

as to suggest that “favored status” created an “absolute right to be interviewed or selected for the vacancy”, it said that agencies who choose an outside candidate must “demonstrate that there were sound reasons for filling the position with the most qualified candidate rather than promoting a lesser qualified candidate who happens to be a State employee.” (Ref. M.R. 10.4)

Temporary Promotions

When an employee is temporarily promoted, the employee must meet the minimum qualifications of the position to which the employee is temporarily promoted prior to the temporary promotion. A temporary promotion may be granted by the appointing authority, for a period of time not to exceed six (6) months. When an assignment extends beyond 90 days, registers will be canvassed and selection will be made.

Casual/Seasonal – This is a reminder that Delaware Code, Title 29, Section 5903 (17) is still operative and that there are only select situations wherein casual/seasonal employees can legally work 30 hours or more per week for more than a nine month period. Those not meeting the criteria outlined in Delaware Code must be scheduled to work less than 30 hours per week unless there is written approval by the Director of the Office of Management and Budget and the Controller General. Such permission is only expected to be granted in unique situations.

EMPLOYEE ACCOUNTABILITY– Merit Rule Chapter 12

Paper Suspension

- It is a written communication to an employee establishing that the employee will be treated as having served a disciplinary suspension. Unlike a suspension without pay, the paper suspension involves no lost time from work for the affected employee. It does, however, count for purposes of progressive discipline.
- One of the benefits of paper suspensions (for suspensions of less than one week’s duration) is that they can be imposed on FLSA exempt employees without jeopardizing the employees’ exempt status.
- Paper suspensions are also useful in ensuring continuity of services provided to the public by preventing the unnecessary absence of employees from the workplace.
- In this regard, paper suspension also precludes the absent employees’ coworkers from having to shoulder the burden of their work during the absence created by the disciplinary suspension. While paper suspension can be imposed for employees covered by the Merit Rules, they probably should not be unilaterally adopted for employees covered by collective bargaining agreements. (Ref. M.R. 12 & 18)

Grievance Process at Office of Management and Budget Step

Upon receipt of a written hearing request, Human Resource Management will notify the parties by e-mail, letter marked "confidential" upon request, or facsimile, of the assigned hearing officer, hearing date, time and location. Only requests for hearing postponements

received within 7 calendar days after the hearing notification request will be considered, unless unforeseen emergency (e.g. documented medical emergency).

Such requests shall be sent by e-mail or fax with a copy to the other party; specify the reason(s) for the postponement, propose at least two alternative hearing dates that fall within 14 days after the first scheduled hearing date; and the requesting party shall contact and set forth the other party's position on the rescheduling request, and indicate whether the other party is available on the alternative hearing dates. Any party's failure to gain a postponement shall require their attendance at the hearing as scheduled. Exceptions will be considered only for compelling circumstances. If party fails to appear at the scheduled hearing, the hearing may proceed in that party's absence, and a decision will be made based upon the other party's presentation and the available record. **(Ref. M.R. 12 & 18)**

Employees who have been terminated may choose an expedited appeal process such that employees may simultaneously file an appeal with the Director of the Office of Management and Budget and the MERB. The MERB will schedule the appeal anytime after a 30-day period following the appeal request. The Director of the Office of Management and Budget or designee will hear the appeal within 30 days. If employees win their appeal or a settlement is reached at the Director level, then the MERB hearing will be cancelled. (Ref. M.R. 12.9)

PERFORMANCE REVIEW– Merit Rule Chapter 13

The July 1 pay increase, if any, shall be denied if the most recent Performance Review on record was "Unsatisfactory" overall; provided, however, that any such Unsatisfactory rating recorded by the preceding December 31 was followed by another Unsatisfactory rating within the "3 to 6 months" specified by Rule 13.3. Absent the employee's departure from State service during that period, failure to complete a follow-up Review means the employee's performance is "Meets Expectation" by default. If that occurs, the employee shall receive the July 1 increase. **(Ref. M.R. 13)**

Performance Reviews—the July 1 pay increase should be denied based on the LATEST evaluation (if it is not satisfactory). If a non-satisfactory review was completed before December 31st, then another review should have been completed because of the requirement for a reevaluation within 3 to 6 months in those circumstances. **(Ref. M.R. 4.12.4 & Budget Epilogue)**

Performance Review documents and instructions are available on-line at OMB's website at: [Employee Relations--Performance Documents](#)

EMPLOYEE DEVELOPMENT AND COMMUNICATIONS–Merit Rule Chapter 14

The state policy on employee communication to external groups can be found on the HRM website under policies and procedures:

[Employee Communications to External Groups](#)

EMPLOYEE RESPONSIBILITIES– Merit Rule Chapter 15

Separation

Employees who resign their position in the classified service must give their agency a minimum of two weeks advance notice in writing. Employees failing to provide such notice may be denied reemployment rights.

Unauthorized Absences

Any absence from duty that is not in compliance with the rules governing authorized leaves shall be considered an absence without leave and is cause for disciplinary action. No employee shall absent oneself from duty without authorization by the appointing authority, except in case of emergency illness, accident, or serious unforeseen circumstances. Such emergency conditions should be brought to the attention of the appointing authority as soon as practicable. **(Ref. M.R. 15)**

HUMAN RESOURCE RECORDS – Merit Rule Chapter 16

The employee's personnel record is part of the permanent records of the employing agency. Upon transfer, the complete original personnel record of the employee is to be forwarded to the gaining agency. The losing agency will keep copies of transactions which took place while the employee was employed with that agency as part of that agency's permanent personnel records. An employee's complete personnel file is to be maintained by the last agency of employment. **(Ref. M.R. 16.1)** (See also, appendix PHRST Policy & Procedures)

Employees shall have controlled access to their records. **(Ref. M.R. 16.2, see also, 19 Del. C. Section 719)**

Employees breaching other employee confidentiality shall be subject to disciplinary action.

Procedures on Record Retention

[General Records Retention Schedule](#)
[Delaware Public Records Law](#)

DOWNLOAD FORMS: **[Delaware Archives: Government Service Forms](#)**

PAYROLL– Merit Rule Chapter 17

“Effective January 1, 1996 in accordance with Section 34 of the FY 1996 Budget Act, the State requires all new employees to be paid by direct deposit. All employees hired after December 31, 1995 must be in compliance. **Direct deposit of pay is a condition of employment.** Applicants should be so advised during the interview process.”

FY 2011 Budget Act

THE GRIEVANCE PROCEDURE– Merit Rule Chapter 18

Merit Employee Relations Board (MERB): The MERB's three areas of responsibility include:

-To act as the final step in the Merit grievance procedure. The Board must make grievance rulings within 90 days of submission, unless both the employee and management agree to an extension.

-To adopt or reject changes to the Merit Rules after a public hearing. Proposed rule changes must be reviewed by the Statewide Labor-Management Committee prior to submission to the Board.

-To request that the Director of the Office of Management and Budget investigate problems or complaints arising from the impact of Merit policies and procedures on employees.

The Director of the Office of Management and Budget acts neither as “secretary” to the MERB nor participates in deliberations. The Director of the Office of Management and Budget, or designee, will act as a liaison between the MERB and the Office of Management and Budget and attend Board hearings. The Office of Management and Budget may testify and/or represent itself or other State agencies before the Board. The MERB and OMB may fashion appropriate remedies for meritorious grievances. Remedies may include granting back pay, restoring a position or benefit, placing employees in positions they were wrongfully denied, or otherwise making employees whole.

Step 1

- **Grievant has 14 calendar days** to submit written grievance to immediate supervisor;
- **Supervisor has 14 calendar days** to meet with grievant & to render written decision;

Step 2

- **Grievant has 7 calendar days** to submit written appeal to top agency personnel official or representative;
- **Management Official has 30 calendar days** to meet with grievant & to render written decision;

Step 3

- **Grievant has 14 calendar days** to submit written appeal to the Director of the Office of Management and Budget;
- **Director (designee) has 45 calendar days** to review all documents and attempt resolution and/or to meet with all involved parties & resolve and/or to render written decision;
- 3rd Step Decision is final and binding upon agency management;

If grievance has not been settled

- **Grievant has 20 calendar days** from the date of the written decision/the date of the informal meeting (whichever is later) to submit written appeal to MERB.

[Rules Governing Practice and Procedure before the Merit Employee Relations Board of the State of Delaware](#)

[The State of Delaware Merit Rules](#)

The State of Delaware [Merit Grievance Form](#)

[The State of Delaware Merit Appeal Form](#)

DEFINITIONS – Merit Rule Chapter 19

Applicable definitions are found in Chapter 19.

Immediate Family

... parent, stepparent or child of the employee, spouse or domestic partner...is another way of saying the employee's parents, the employee's parent-in-laws, the parents of the employee's domestic partner etc...

Permanent Part-Time Employee

Part-time means the filling of an established position at less than full-time but at least an average of 15 hours per week. The average number of hours worked by a part-time employee shall be calculated as a percentage of the applicable full-time schedule. To permit flexibility and to meet the organizational needs of an agency this average may be computed over a period of 7, 14, or 28 consecutive calendar days. This definition does not apply to casual, seasonal, temporary or emergency positions.

Reinstatement applies to individuals who had merit status when they left State employment and are rehired into the same class within a 2-year period from which the individual left the position in good standing.

Additional Statewide personnel policies and procedures, as follows, can be found at [Statewide Policies and Procedures](#)

Additional Statewide information can be found under FAQ s at: [Human Resource Management website](#)

SECTION 2

**Update(s) to
Human Resource Procedures Manual
Fiscal Year 2011**

SECTION 3

FY 2011 Budget Epilogue Language
Impacting Human Resources
(Excluding agency specific items)

Section #	Description
6	Language per authorization of certain exempt positions
7	Describes various employment costs
8	Merit system and merit comparable salary schedules; classifications on a 40 hour work week schedule; selective market variation; shift differential for nurses; competency-based and other special pay plans; performance review and impact on pay; maintenance reviews; reclassifications; retention of salary upon voluntary demotion; special holiday pay; overtime for weather-related emergencies; call back and stand-by pay; other pay plans
9	Salaries and wages for positions not covered by the provisions of 14 Del. C. C. 13 or by the merit system (with certain exclusions) and position comparability.
10	Line item salaries; how to handle pay if such positions become vacant; dual incumbency for such positions; special provisions for Secretary of DHSS and Police; pay for board members and certain elective officials
11	Merit system compensatory time is no longer lost if not used within 180 calendar days of accrual
12	Language per custodial work
13	Pilot projects within specified agencies
17	Technical adjustments to the personnel complement
18	Advanced salaries
19	Transfer of Medicare Part D Retiree Drug subsidy from the Employees' Health Insurance Fund to the other Post Employee Benefit Fund
20	Workers' Compensation safety and return to work policies
21	Deductions for DSEA members
22	Temporary appointees for special projects
23	Health insurance enrollment
24	Health insurance for casual/seasonal employees
25	Health insurance for non-state organizations limitation on participation
26	Enterprise Resource Planning
31	State Employee Benefit Committee is authorized to amend the rule for Employees Eligible to participate in the State Group Health Insurance Program
32	Encourages the use of videophones in lieu of state-owned vehicles
52	Reduction of the size of state government through attrition and de-authorization of vacant positions
60	Contract with University of Delaware for statistical analysis
63	Hiring review process/Temporary promotions
64	Overtime management practices review process
67	Delaware Merit Employee Mediation Pilot Program
69	Administration of collective bargaining in state service
75	Codifying legislative changes in Merit Rules
76	Changes necessary to implement ERP modules
77	Pension Fund administration

82	Paying of employee parking in the Government Center Parking Garage
99	Change in elimination period for Short-term disability from 60 days to 30 days effective August 1, 2010
111	Pilot projects per electronically transmitting remittance advices to those employees or contractors receiving payments via direct deposit and electronic funds transfer
130	DOS shall establish shift differential for Delaware Veterans Home LPNs
131	DOS has the authority to fill vacant positions at the Delaware Veterans Home
143	DHSS has the authority to fill vacant positions with qualified applicants for specified positions
172	DHSS employees designated as Psychiatrists as well as the Chief Psychiatrist at DPC are eligible for stand-by and call back pay
208	
226	DOC employees designated as Correctional Emergency Response Team (CERT) members as well as the Chief of Security and Inspections, and the Health Services Director and Treatment Administrators shall be eligible for stand-by pay
277	Employees of Delaware Transit Corporation that ride the State van pool may remain on a single van and continue to pay fees.
	Grant-in-Aid SB 315
28	Codify floating holidays